

Part of

Brexit: check how the new rules affect you



Guidance

Family law disputes involving the EU: guidance for legal professionals

Published 31 December 2020

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This guidance only relates to cases involving the courts of England and Wales. If you have a cross-border case relating to the courts in Scotland or Northern Ireland, you should seek advice on [mygov.scot](#) or [nidirect.gov.uk](#).

The EU Commission has also published [guidance](#) on family law disputes.

1. Divorce

1.1 Transitional cases in England and Wales

The treatment of cases commenced before the end of the transition period (11pm on 31 December 2020) is governed by Title VI of Part 3 of the [Withdrawal Agreement](#).

Jurisdiction

Under the terms of the Withdrawal Agreement, divorce proceedings ongoing in England and Wales at the end of the transition period will continue under the current law and rules of [Council Regulation 2201/2003 \(Brussels IIa\)](#) to determine jurisdiction.

The jurisdiction rules set out in Article 3 of Brussels IIa have been applied to all cases of opposite sex divorce, legal separation and annulment (divorce etc.) in England and Wales, whether or not the case has a cross-border element.

The jurisdiction rules can mean that parties to a marriage may have standing to seise the court in a number of different member states. Parallel proceedings are avoided by the lis pendens rule in Article 19, requiring the court second seised to stay the proceedings before it.

For [same sex divorce](#) and [civil partnership dissolution](#), legislation in the UK provides jurisdiction rules which broadly replicate the rules in Brussels IIa.

Recognition

Courts in England and Wales will continue to recognise divorces granted in EU member states in the same way under Brussels IIa if the divorce was granted before the end of the transition period or if the divorce proceedings were started before the end of the transition period (even if the divorce is only ordered after the end of the transition period). Judgments on divorce have generally been recognised in other member states without any special procedure, under Article 21, subject to the exceptions contained in Article 22. A party seeking or contesting recognition of orders for divorce etc made in England and Wales is required to produce the documents detailed in Article 37 and in particular the Article 39 certificate at Annex I to Brussels IIa (see [family court form D180](#)).

An interested party (in England and Wales or in an EU member state) can apply for a court order that a judgment on divorce should not be recognised.

For further information, refer to the [Family Procedure Rules 2010](#) and [D180 Certificate](#).

1.2 New cases in England and Wales

Jurisdiction

Brussels IIa has been revoked. For cases starting after the end of the Transition Period, new jurisdictional rules for the court in England and Wales which are based on the applicable Brussels IIa rules have been inserted into section 5(2) of the [Domicile and Matrimonial Proceedings Act 1973](#), by the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations. Sole domicile as a ground of divorce etc. jurisdiction has been added. The court in England and Wales has discretion to stay proceedings when there are proceedings continuing in another jurisdiction.

For same sex divorce and civil partnership dissolution, legislation in the UK provides jurisdiction rules in the EU Exit Regulations which correspond to those for opposite-sex divorce.

For further information, refer to the [Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations](#) and the related Explanatory Memorandum.

Recognition

The court in England and Wales recognises divorces granted in EU member states in which proceedings started after the end of the transition period in the same way as they currently do for orders from non-EU countries. The rules on recognition are to be found in the [Family Law Act 1986](#) which implemented the [1970 Hague Convention](#) on the recognition of divorce and legal separations.

(The 12 EU member states that are currently party to the 1970 Hague Convention on Divorce Recognition are Cyprus, Czech Republic, Denmark, Estonia, Finland, Italy, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Sweden.)

1.3 Transitional Cases in an EU member state

The treatment of cases commenced before the end of the transition period in EU member states is governed by Title VI of Part 3 of the Withdrawal Agreement.

1.4 New cases in an EU member state

The EU Commission has published [guidance](#) setting out the rules that will apply in EU member states to cross-border family law disputes involving the UK.

2. Maintenance

2.1 Transitional cases in England and Wales

The treatment of maintenance cases commenced under [Council Regulation 4/2009 \(the Maintenance Regulation\)](#) before the end of the transition period is governed by Title VI of Part 3 of the [Withdrawal Agreement](#).

Jurisdiction

The jurisdiction provisions of the Maintenance Regulation will continue to apply to proceedings instituted before the end of the transition period.

Recognition and enforcement

For recognition and enforcement of decisions, Title VI of Part 3 of the Withdrawal Agreement states that a maintenance decision made in England and Wales that is to be recognised and enforced in another EU member state must be recognised and must have a declaration of enforceability (registration for enforcement) before it can be enforced there. It should be accompanied by the documents required under Article 28, subject to the exceptions in Article 29.

A maintenance decision made in another EU member state (except Denmark) that is to be recognised and enforced in England and Wales does not need to be registered for enforcement. It should be accompanied by the documents required under Article 20.

For further information, refer to the [Family Procedure Rules 2010](#).

2.2 New cases starting in England and Wales

Jurisdiction

The Maintenance Regulation has been revoked. For cases starting after the end of the transition period, the court in England and Wales decides if it has jurisdiction using the relevant non-EU rules (unless parties have, before the end of the transition period, made a choice of law agreement in accordance with the EU rules). These rules are different depending on the type of maintenance case before the court.

The court in England and Wales continues to recognise choice of court agreements in maintenance cases agreed before the end of the transition period in writing between all parties which satisfy the relevant conditions, even if the case is issued after the end of the transition period.

Recognition and enforcement of maintenance decisions

The UK uses the rules of the [2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance](#) with other States Party, which include all EU member states except Denmark. The 1973 Hague Maintenance Enforcement Convention will continue to operate between the UK and Denmark.

2.3 Transitional cases in an EU member state

The treatment of cases commenced before the end of the transition period in EU member states is governed by Title VI of Part 3 of the Withdrawal Agreement.

2.4 New cases starting in an EU member state

The EU Commission has published [guidance](#) setting out the rules that will apply in EU member states to cross-border family law disputes involving the UK.

3. International parental child abduction

The main provisions of the [1980 Hague Convention on the Civil Aspects of International Child Abduction](#) are incorporated into the law of the UK jurisdictions by the [Child Abduction and Custody Act 1985](#). All EU member states are party to the 1980 Hague Convention and use it with the UK. This provides a summary procedure for children wrongfully removed or retained away from their country of habitual residence to be returned there, so that long-term decisions about the future of the child can be made (abduction includes both wrongful removal and wrongful retention).

Members of the public whose child has been abducted out of England and Wales should contact ICACU (International Child Abduction and Contact Unit) for information on what action to take. If the member of the public believes their child is at risk of abduction in future from any part of the UK, they should contact the charity reunite International Child Abduction Centre for advice and information.

If they believe the child is being wrongfully removed from the UK and is on their way out of the country they should go at once to their nearest police station and ask for wandering list action. They should also contact reunite International Child Abduction Centre.

For further information refer to:

- [The ICACU application form and guidance](#)
- [The Family Procedure rules 2010](#)
- [The ICACU specialist panel](#)
- [Reunite International](#) on 0116 2556234.

4. Children cases (parental responsibility)

4.1 Transitional cases in England and Wales

The treatment of children cases commenced under [Brussels IIa](#) before the end of the transition period is governed by Title VI of Part 3 of the [Withdrawal Agreement](#).

Jurisdiction

The jurisdiction provisions of [Brussels IIa](#) will continue to apply to proceedings instituted before the end of the transition period.

Recognition of orders

The recognition and enforcement provisions of Brussels IIa will apply to proceedings instituted before the end of the transition period.

4.2 New cases in England and Wales

Jurisdiction

Brussels IIa has been revoked. For cases starting after the end of the transition period, the courts will apply the [1996 Hague Protection of Children Convention](#).

Recognition of orders

Amendments to existing legislation made by the [Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations](#) make provision to enable courts in England and Wales to use the 1996 Hague Convention to recognise and enforce orders made in EU member states.

4.3 Transitional cases in an EU member state

The treatment of cases commenced before the end of the transition period in EU member states is governed by Title VI of the Withdrawal Agreement.

4.4 New cases in an EU member state

The EU Commission has published [guidance](#) setting out the rules that will apply in EU member states to cross-border family law disputes involving the UK.

5. Placement of children

5.1 Transitional cases in England and Wales

The treatment of cases commenced before the end of the transition period is governed by Title VI of Part 3 of the [Withdrawal Agreement](#).

The jurisdiction provisions of [Brussels IIa](#) continue to apply to such cases, and judgments given in such proceedings can still be recognised and enforced under the Brussels IIa rules. The cooperation chapter of Brussels IIa also continues to apply so long as a request was received before the end of the transition period.

For further information, refer to: [the ICACU application form and guidance](#) and [the Family Procedure Rules 2010](#).

5.2 New cases in England and Wales

For cases commencing after the end of the transition period, local authorities in the England and Wales will apply the rules in the [1996 Hague Protection of Children Convention](#) on placements to cases involving EU member states. Under these rules they need to seek and obtain consent to the placement in every case. Under the 1996 Hague Convention, the court hearing public law care proceedings will normally be the court of the country of the child's habitual residence.

5.3 Transitional cases in EU member states

The treatment of cases commenced before the end of the transition period in EU member states is governed by Title VI of Part 3 of the Withdrawal Agreement.

5.4 New cases in EU member states

The EU Commission has published [guidance](#) setting out the rules that will apply in EU member states to cross-border family law disputes involving the UK.